Supreme Court, U.S.
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ALEXANDER L. STEVAS
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NO. 84-372

in the Supreme Court of the United States

OCTOBER TERM, 1984

ALAN FRIEDRICH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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STATEMENT OF THE CASE

Respondent makes two statements in its Memorandum In Opposition To The Petition For Writ Of Certiorari which need correction:

First, Respondent states that Jo Hall ". . . told Clanton that she was Rusty Hall's source of cocaine and *that petitioner was her 'connection'* . . . ." (Memorandum of United States, page 2) (Emphasis added). There was no testimony at trial to the effect that Petitioner was Jo Hall's "connection". Judge McKay correctly noted in his dissenting opinion that there is *no* "support in the record that Mr. Friedrich was introduced to Mr. Clanton by Rusty Hall's wife, Jo Hall, as 'Rusty's source of cocaine'." *United States v. Dickey*, 736 F.2d 571, 600 (10th Cir. 1984). (McKay, J. dissenting). The portions of the record cited by the majority in *Dickey* and which form the basis of Respondent's assertion do not support this proposition. *United States v. Dickey*, at 584. (App. 1, 2-4)[1].

Second, Respondent claims that Petitioner's attorney failed to specifically object to the impropriety of the prosecutor's rebuttal argument and, as a result, Petitioner should not now be allowed to assert that he was prejudiced by the prosecutor's improper comments. (Memorandum of United States, page 4). This is not accurate. It was stipulated at the beginning of the trial that an objection by one defense counsel will be deemed an objection by all unless an attorney specifically opted out of the

[1]The symbol "App." refers to the Appendix located at the end of this Brief.

objection. (App. 5). There were several objections throughout the prosecutor's rebuttal argument made by co-counsel which are all properly attributable to Petitioner, thereby protecting his right to seek appellate review of the content of the prosecutor's rebuttal closing argument.

Accordingly, Respondent's assertion that Petitioner is not entitled to relief based upon the prosecutor's improper comments because his attorney failed to object at trial is without merit.

Appendix

R.Vol. XVI at 75
Redirect examination by Mr. Snoke [Assistant U.S. Attorney] of Mr. Clanton

* * * * *

Q —concerning the source of supply of cocaine?

MR. WILLIAMS: If the Court please, now I want to object to counsel leading and suggesting. He has asked for a conversation and now he is suggesting what he wants him to talk about.

THE COURT: Overruled.

A Sir, I had several conversations with Ms. Hall while I was up there. The conversation I recall was one that took place in the bunkhouse behind the main house where Ms. Hall informed me that she would be able to sell me cocaine at a cheaper price if I would come down to Miami and purchase from her. She informed me that she was Mr. Hall's connection down there, that he was coming down and purchasing cocaine from her and her connection. And I stated at that time that I wouldn't do it unless we had Mr. Hall's permission. I did not want him to get mad at me or think I was going around him on his source.

Q All right. Directing your attention to the time when you introduced Mr. Hill and Mr. Hall, Joe Hill to Mr. Hall, sometime after the eight ounce transaction. Were you present at that—well, I guess you were present. Who else was present at that introduction?

R.Vol. XIII at 145-147
Direct examination by Mr. Baker [Assistant U.S. Attorney] of Mr. Clanton

* * * * *

Q Mr. Clanton, I will ask you if you know the defendant Al Friedrich in this case?

A Yes, sir, I do.

Q Do you recall when and where you first met him?

A Yes, sir, I met him on May 10, 1980, at the — the introduction was made at the Aero Facilities hangar at Miami International Airport.

Q You were introduced by someone?

A Yes, sir.

Q Who, please?

A The lady Jo Hall or Shine O'Brian.

Q Is that the defendant named in this case but not on trial, named as Judy Ann Hall?

A Yes, sir.

Q Is she also known as Jo O'Brian?

A Shine O'Brian is the way I knew her, sir.

Q When was this introduction made, you say in May?

A May 10, 1980.

Q What were you doing in Florida?

A I was there to purchase a pound of — excuse me, a kilo of cocaine from Mr. Friedrich and Ms. Hall.

Q Had you made any arrangements prior to flying there to buy it?

A Yes, sir.

Q How had you made the arrangement?

A I had made the arrangements with Jo Hall.

Q In person?

A Yes, sir.

Q And where were you when you made those arrangements?

A Well, we started making the arrangements at Mr. Hall's residence on the 24th of April. She told me if I would come down there she would sell me cocaine at a cheaper price. She informed me that she was the connection where Mr. Hall was getting his cocaine at. And I told her I wouldn't do it unless she got Mr. Hall's permission. I didn't want him to think I was going around him and taking one of his connections. So she

got Mr. Hall's permission, and after a couple of phone calls I arrived on the 10th to make the purchase.

MR. HIRSCHHORN: Your Honor, I object to the last portion of that answer and move to strike it. That is a conclusion on the part of the witness, "she got Mr. Hall's permission," He doesn't know that.

THE COURT: Do you care to explore it more?

Q (Mr. Baker) Were you there at that conversation where the matter was brought up to Rusty Hall, Mr. Clanton?

A No, sir, I wasn't. She just told me about it.

Q All right. She told you she had permission, is that correct?

A That is correct.

MR. HIRSCHHORN: Your Honor, I renew my motion to strike the answer.

THE COURT: Overruled.

Q Where did the purchase take place in Miami?

A The purchase was made at Jo Hall's residence.

Q And can you tell the Court and jury where that was — house, apartment, what it was?

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R. Vol. XIII at 90
Direct examination by Mr. Baker [Assistant U.S. Attorney] of Mr. Clanton

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MR. GRACE: Excuse me, Your Honor. I believe our rule is still in effect that one objection is adopted by all the others so we don't all have to object.

THE COURT: I have not heard anybody say otherwise, once I said it would be in effect.

MR. GRACE: All right.

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